

By-elections as the mirror of «electoral democracy» – Ukrainian style

No. 29/277, July 22, 2002

Yulia Tyshchenko, Head of Civil Society Programs

Constituencies 35, 201 and 18 were the only ones among 225 Ukrainian constituencies in which the Central Election Commission recognized the election results as invalid and had them abolished.

The by-elections were scheduled for July 14. They gave a number of Ukrainian «business politicians» and MPs of earlier parliaments to try and get elected to the 4th parliament. The lists of the candidates and the situation suggested that the campaign would be tough. On May 15 member of the

Central Election Commission Mykola Rybachuk predicted that as many as 15 to 20 candidates could run in each of the constituencies, while in the general elections on March 31 the average number of candidates in a constituency was between 7 and 10. Actually, Mykola Rybachuk was almost right: as many as 43 candidates ran in the three constituencies. Of them 15 used to be MPs before, 26 were officially non-partisan, though some of them were supported by a specific party or block. The candidates included 11 businessmen, 13 unemployed and 3 NGO activists.

The Summer Race

The by-elections in constituencies #35 (the Dnipropetrovsk region), #201 (Cherkasy) and #18 (the Vinnytsya region) suffered from the same problems as the 2002 in general and could be seen as logical development of practices used during the 2002 campaign. The summer race, launched on May 15, could be described in terms of the use of the notorious «administrative resource», buying votes and «black PR» campaigns. According to Oleksandr Chernenko, spokesman of the Committee of Voters of Ukraine, «the components – the administrative resource, PR and buying votes has been present in all three constituencies, which the dominant feature in each of the districts was its own» (Politychna Ukraina, July 11, 2002). According to CVU's long-term monitoring results, «administrative resource in its unhidden form showed itself in district #35, where the governor openly campaigned in favor of one of the candidates, where local bureaucrats, particularly the structures of the Ministry of the Interior, were involved in the elections in support of the candidacy of Victor Drachevsky.» In election constituency #201 in Cherkasy, the CVU observers recorded «a huge number of technical things, particularly PR and «black PR»/ During the summer campaign the local Cherkasy press wrote that «villages of the Cherkasy district are virtually loaded with fake leaflets, on every pole there are announcements

on behalf of several candidates in the #201 constituency asking voters to come to polling stations to get their UAH 30 or UAH 40 (Antenna, July 11, 2002). In constituency #18 of the Vinnytsya region the CVU observers recorded «a very widespread fact of bribing voters, free giveaways or low-price sales of goods and services.» Evidence of the use of «administrative resource» to influence the outcome of the by-elections was observed by constituency #35 too. Therefore, the by-elections produced a rather controversial result.

Stories of the Three Constituencies

Constituency #18

Following the voting on March 31, on April 3, 2002, the regional election commission officially certified the election of Svitlana Melnyk, member of the Socialist Party of Ukraine, as a winner of the race in that constituency. She received 27,496 votes. Yet, two days later the regional election commission issued a resolution that the election result in the constituency was void based on the judgement of the Shargorodsky Court of the Vinnytsya region that demanded to partly satisfy the lawsuit of candidate Yevhen Sukhin, Melnyk's top competitor who had received 25,454 votes. According to Sukhin, a number of violations of the election law in the constituency influenced the outcome of the race. On April 4 the Shargorodsky Court recognized violations at 18 polling stations of the constituency. The Central Election Commission annulled its earlier resolution certifying the election of Svitlana Melnyk and demanded that the regional election commission reviewed all complaints, acts and appeals related to voting and vote counting at the rest of the polling stations of the constituency that had not been subject of consideration by the Court. On April 25, the elections in constituency #18 were announced invalid, but the decision was now heard by the Supreme Court of Ukraine. The decision was challenged by the who saw it as the power-holders' «conspiracy» to prevent an opposition SPU candidate from joining the parliament.

In the summer race Svitlana Melnyk was supported by the opposition and informally backed by «a large part of opposition-minded Nasha Ukraina», as Oleksandr Chernenko of CVU put it, though officially Nasha Ukraina supported a different candidate, formally non-partisan farming cooperative chairman Mykola Odaynyk who is believed to be close to a leader of Nasha Ukraina Petro Poroshenko. Poroshenko's own positions in Vinnytsya have been traditionally strong. Another strong candidate and competitor to Svitlana Melnyk and Mykola Odaynyk was Petro Melnyk, rector of the Academy of State Taxation Service of Ukraine. On March 31, he already completed for a seat in the parliament in constituency #95 of the Kyiv region, but lost to opposition candidate Yevhen Zhovtiak. Though Petro Melnyk later challenged the election results in constituency #95, his appeal was not satisfied.

The summer campaign in the Vinnytsya region brought some noteworthy developments: the regional election commission disqualified Oleg Lantukh (who had come third in the March 31 polling) for submitting inaccurate financial report. Another disqualified candidate was Valery Kolomoitsev-Rybalko.

The winner on July 14 was Mykola Odaynyk, supported by 46,276 voters (43.55%). The second strongest candidate, Petro Melnyk, got 21.40% of the votes, while the winner of March 31

Svitlana Melnyk got only 17.6%.

Commenting Odaynyk's victory, observers agree that its major component was the support of Nasha Ukraina. Victor Yushchenko personally came to Vinnytsya to support the block's candidate. In March Nasha Ukraina had the best result in the region - 29.43% - but in a majoritarian constituency then-candidate of Nasha Ukraina Mykola Koval received 16,298 and the fourth best result. Later on, he withdrew from the by-election race. Another factor that helped Odaynyk to win was what observers described as «accumulating the forces of authorities not so much to make Odaynyk win as to stop Svitlana Melnyk» (according to Kostyantyn Bondarenko, www.part.org.ua, July 15, 2002). As no significant violations were registered in the constituency on the polling day, it is likely that soon Nasha Ukraina faction in the parliament will receive a new recruit.

Constituency #201

On March 31, the winner of the race in the Cherkassy-based constituency was Mykola Bulatetsky, a candidate of Nasha Ukraina, supported by 22,780 voters. The second strongest candidate was member of the Democratic Union Oleksiy Marchenko, who received 19,971 votes.

On April 12, 2002, the Sosnivsky Court of Cherkasy satisfied Oleksiy Marchenko's complaint that the outcome of the voting had been affected by the failure of the regional election commission to remove the name of Volodymyr Kosmyna, who had withdrawn from the race on the even of the polling date, from the ballots. On April 16, following the special session of the commission the day before, the regional election commission ignored the judgment of the Sosnivka Court as groundless and pronounced Bulatetsky the winner again. On April 25, however, the Central Election Commission satisfied Marchenko's complaint and judged the election result in the constituency invalid. On April 30 the Supreme Court of Ukraine judged that the decision of the CEC had been legitimate and the election results in constituency 201 were void.

The summer campaign in the constituency was fought not as much between Bulatetsky and Marchenko as between newcomers from other regions. The constituency received the largest number of potential candidates – 30, but only 12 of them were actually registered and took part in the race. The favorites of the race were Bulatetsky and the former mayor of Cherkasy Volodymyr Oliynyk, supported by Yulia Tymoshenko's block. Another strong candidate was leader of the radical left Progressive Socialist party Natalia Vitrenko. However, the outcome of the race came as a surprise: the winner was Nestor Shufrych, a candidate of the SDPU (o) who was registered for the race as the president of the Cherkasy Meat Company. Though never present in any preliminary rankings or seen as a serious candidate, he received 29.80% of the votes. The SDPU (o) got only 4.5% of the votes in the region on March 31. By all means, Cherkasy cannot be regarded as a place where a stranger Nestor Shufrych from the Transcarpathia would have influence and support. In the 1998 elections, Shufrych, then president of the West-Contrade Joint Venture, won a seat in the Transcarpathian region (constituency #70), but was known in the 3rd parliament mainly as someone who is fond of sports: he is a master archer, master tennis player; he is fond of horse riding and collecting

sables. In March he lost the race in the constituency to ex-mayor of Uzhgorod Serhiy Ratushniak. Noteworthy, constituency #70 was infamous for the use of «dirty techniques» – for instance, the constituency saw unprecedented number of namesakes among the candidates: or six Ratushniaks who intended to take part in the race, there were three Ratushniaks whose first names and patronymics were the same: Serhiy Mykhailovych.

During the by-elections in constituency 201, a number of violations were registered by CVU observers. According to the CVU statement, «the most common were reports from observers about evidence or suspicion of bribing voters (polling stations ## 1, 2, 7, 15, 16, 18, 23, 24, 29, 35, 36, 44, 49, 56, 69, 81, 88, 89, 90, 96)». Hence, according to the CVU, the major violations that could influence the outcome of elections in the constituency were massive attempts to bribe voters, but «the CVU does not have sufficient volume of evidence to determine the level of impact of those violations on the volition of the citizens». Meanwhile, a local opposition publication, Antenna, wrote that citizens «showered the regional election commission with statements that UAH 20 had been offered for a vote for Shufrych». The candidates who lost to Shufrych also claimed there were facts of bribing voters. Mykola Bulatetsky described the polling day as «the marketplace, trade, purchase and sale of votes through a network marketing method». Practically all other candidates shared his opinion and announced they were going to challenge the result in court. At least five candidates were planning to pursue the case as of July 16.

On July 18 the CEC refused to satisfy the complaint of candidate Mykola Gaber who demanded to annul the election results in constituency #201, as «all acts of violations that reportedly took place during the voting on July 14 do not meet the legal requirements, as they were signed by official observers without indication of their full name and made without involvement of voters», as the CEC put it (UNIAN, July 18, 2002).

Observers believe that the technique used by Shufrych may be successfully used in other electoral battles, for instance, in the 2004 presidential elections. It is also argued that the opposition lost as representatives of Nasha Ukraina (Bulatetsky) and Yulia Tymoshenko's block (Oliynyk) failed to find agreement again.

Constituency #35

During the March elections this constituency saw one of the most dramatic situations of political confrontation between candidate of Nasha Ukraina Oleksandr Zhyr MP, head of the parliamentary commission in charge of investigation of the murder of Georgy Gongadze, and a representative of «Za Yedynu Ukrainu!», first deputy head of the regional Department of the Interior and head of Criminal Militia of Dnipropetrovsk Victor Drachevsky.

In 1998, Oleksandr Zhyr was victorious in the constituency with 24.87% of the votes. He was also the strongest candidate for the 2002 race. Hence, from the very start the race was hindered by the use of the «administrative resource» against him. The vote counting procedure that gave the victory to Drachevsky on March 31, 2002, was reported and heavily manipulated. Some time later the Central Election Committee satisfied Oleksandr Zhyr's appeal to annul the regional election commission's decision to pronounce Drachevsky as the winner. According copies of to

the protocols collected by Zhyr's supporters at the polling stations, Drachevsky received 32,486 votes while Zhyr got 31,748 votes. Meanwhile, according to the data announced by the regional election commission, Drachevsky was supported by 32,522 votes and Zhyr got 31,802 votes. The verification of protocols showed that out of 92 protocols submitted to Zhyr to the CEC and the official protocols submitted by the regional election commission only 37 had the same data. On April 19 the CEC annulled the election results in constituency #35 of the Dnipropetrovsk region.

The key competitors in the by-elections in the constituency were Victor Drachevsky and Oleksandr Zhyr. Initially, there had been another strong candidate, ex-director of the Nikopol Ferroalloy Plant Oleksiy Koval, but he withdrew from the race. The «twin» method was also used in the constituency: a namesake of the top candidate, Anatoly Zhyr, was registered to run. Another potentially strong candidate who had the capacity to use the «administrative resource» was Alla Malaya, deputy chairman of the regional council of elected representatives. The most controversial development of the race was the judgment of the Nikopol City Court to disqualify Oleksandr Zhyr. On July 12, only two days before the polling day, the Court judged that Oleksandr Zhyr had broken the rules of the election law by using the funds from sources other than his official election account to pay for his leaflets.

Zhyr's party, the Party of Reforms and Order, issued an official statement accusing the regional election commission of refusing to provide them with a copy of the decision and claiming that direct appeals of Oleksandr Zhyr to the CEC had met reluctance of members of the CEC to react to the situation. According to the statement, the elections in the constituency were substituted with «appointment of a candidate by the executive branch». The situation was predictable: Oleksandr Zhyr has been an integral part of the driving force behind the investigation into the case of murder of Georgy Gongadze. He also met with Mykola Melnychenko and brought the video tape of Melnychenko's statement to Ukraine. Later on, Oleksandr Zhyr publicly said he did not intend to challenge the outcome of the elections in his constituency: «what's the point of seeking truth in a system that is fully controlled by the power-holders?»(www.part.org.ua. July 15, 2002).

Earlier on, the Committee of Voters of Ukraine pulled out its observer mission from the constituency and stated that «since the violations, found in constituency 35 during the pre-election campaign, deprived the candidates of the right for equal conditions, and [deprived] the citizens of the right for free expression of their volition, the Committee of Voters of Ukraine withdrew from the observation of voting and vote counting in the constituency.»

Summing up, one may say that the by-elections reflected the practice that became common during the March elections. While in each of the constituencies manipulations were different, it is worth noting the «testing» of some techniques in constituencies #201 and #35. While in the first case violations were widespread but difficult to prove, in the second case the drawbacks of the election law were used to remove the strongest candidate from the race. The outcome in constituency #35 demonstrated once again the problems of the Ukrainian law and growing possibilities to break it, particularly by power-holders that control law-enforcement bodies. The case showed the possibility to interpret the law freely and use the enforcement mechanisms selectively – and domination of the «ends justify the means» attitude that is too distant from democratic practice.

From Editorial Staff